

Attachment 2
Florida's Pursuit of Clean Water Act § 404 Program WEAssumption

Summary

1. The Florida Department of Environmental Protection (FDEP) plans to submit a CWA § 404 Assumption Request by September 1, 2018; to be issuing 404 permits by mid-December 2018¹.
2. EPA staff have been working closely with FDEP since July 2017 to assist with their goal of submitting a package that meets all federal requirements.
 - a. So far four in-person meetings and bi-weekly calls. Next trip to Tallahassee - June 6th.
 - b. Creative solutions for consistency and program administration.
3. The requirements for state assumption are set forth in CWA §§404(g) and (h) and 40 CFR Part 233.
4. Governor Scott signed legislation in March; provides FDEP authority to administer a 404 program.
 - a. Florida previously considered §404 Assumption, changes in state statutes prevented effort.
 - b. FDEP drafting regulations to implement legislation and describe state's 404(g) program.

Status

1. FDEP rulemaking to be initiated May 11, 2018 with goal to complete August 22, 2018.
 - a. Will create second permitting structure in addition to current state permit.
 - b. Permittee will be required to get both a state ERP and a state 404 permit for certain activities.
2. FDEP drafted an EPA-FDEP MOA which reflects input from EPA.
3. FDEP has engaged the USACE Jacksonville District about developing a USACE-FDEP MOA that describes Florida waters that will be retained under the USACE's authority and other coordination.
 - a. FL has been told politicals are to engage USACE, not staff on all issues including MOA and retained waters.
 - b. OECA – SB is not planning on pushing at this time. Risk in that potentially more of an issue than in ID 402 case.

Major Issues and considerations

- 1.
 - 2.
- ## Ex. 5 Deliberative Process (DP)

¹ If EPA receives a package in early September, the 120-day review/approval will not be completed by mid-December.

Ex. 5 Deliberative Process (DP)

3. EPA is working closely with FDEP staff and USACE staff to understand how the state's methodology for defining wetlands compares with the federal methodology.
 - a. Differences were a barrier to FDEP's previous assumption efforts in 1990s and 2000s.
 - b. It appears that FDEP can potentially address all the consistency issues through instituting controls/requirements that ensure implementation of the state's current methodology:
 - Training and certification of FDEP delineators
 - Verification of delineations
 - Consistent use of data form documenting tests
 - Alleviating permit processing clock pressure
4. Enforcement concerns

a.

b.

Ex. 5 Deliberative Process (DP)

Other Major Tasks to be Completed

1. Finalization of FDEP regulations – August 20 date assumes no issues raised in public process.
2. MOAs with EPA and USACE to be signed prior to package submittal.
 - a. FDEP intends to enter into MOAs with other state and federal agencies as part of program administration.
 - b. Need to be finalized and submitted as part of assumption request package.
3. EPA 120-day review will be quick; therefore, we are working to ensure consistency now.
 - a. Review includes tribal consultation.
4. FDEP needs to draft request package: still working on AG statement, identifying and clearly articulating what FL's permitting process and interagency coordination will be, staffing and funding levels, coordination procedures with tribes and states of AL and GA, development of permit transfer procedures with the USACE.

5.

Ex. 5 Deliberative Process (DP)

6. Pull out GANT chart